

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JULIA PICHARDO,

Plaintiff,

07 CIV 6034 (MHD)

- against -

NOTICE OF

NEW YORK UNIVERSITY and JANE DOE-Student,

MOTION

Defendants.

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PLEASE TAKE NOTICE that, upon the annexed Affirmation of Thomas M. DeSimone, Esq., dated January 22, 2008 and the direction of the Hon. Michael H. Dolinger, U.S.D.J. on January 22, 2008, the undersigned will move this Court, at 500 Pearl Street, New York, New York, Court Room 17-D, on February 4, 2008 at 10:00 A.M. for an Order permitting the firm of Joseph T. Mullen, Jr. & Associates to withdraw as counsel for the Plaintiff in this action and for such other and further relief as this Court deems to be just and proper.

Dated: New York, New York
January 22, 2008

JOSEPH T. MULLEN, JR. & ASSOCIATES

By: _____
THOMAS M. DESIMONE (TMD 0756)
Attorneys for Plaintiff
30 Vesey Street, 15th Floor
New York, New York 10007
(212) 766-1177

To:

GOLDERG & ASSOCIATES
Attorneys for Defendants

39 Broadway, 17th Floor
New York, New York 10006

(212) 968-2400
Attn: Daniel J. Fox

JULIA PICHARDO, Plaintiff
450 6th Avenue
Patterson, NJ 07514

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
JULIA PICHARDO,

Plaintiff,

07 CIV 6034 (MHD)

- against -

AFFIRMATION

NEW YORK UNIVERSITY and JANE DOE-Student,

Defendants.

-----X

THOMAS M. DESIMONE, an attorney duly licensed to practice before the Courts of the State of New York and this Court, hereby affirms the following to be true under penalty of perjury:

1. I am associated with Joseph T. Mullen, Jr. & Associates, the attorneys for plaintiff Julia Pichardo in this action. As such, I am familiar with the facts and circumstances surrounding this litigation. This affirmation is respectfully submitted in support of the within motion for an Order permitting Joseph T. Mullen, Jr. & Associates to withdraw as Plaintiff's counsel with respect to the above captioned matter.

2. This action arises out of a May 4, 2004 incident wherein plaintiff JULIA PICHARDO was injured in the "Dining Hall Area" of Hayden Hall which is located at and part of the defendant's campus at 33 Washington Square West, in the County of New York, City and State of New York. Plaintiff was caused to sustain personal injuries when the door to "Stairwell C" was opened by a student striking plaintiff as she was exiting the "Dining Hall Area" of the subject premises.

3. This office commenced this action through the filing of a summons and complaint on May 2, 2007. This pleading was served upon the defendants on or about June 12, 2007. The case was initially venued in New York County. Issue was joined on or about June 30, 2007 when an answer was interposed on behalf of the defendants. **Copies of the pleadings are collectively annexed hereto as Exhibit "A".**

4. Thereafter on or about June 26, 2007, the defendants served a Notice of Removal removed this case to Federal Court. The Removal was predicated on 28 U.S.C. 1332 (a) as diversity of citizenship exists between the parties and the amount in controversy exceeded Seventy Five Thousand (\$75,000.00) Dollars. The Removal was effectuated pursuant to 28 U.S.C. 1441. Admittedly, the Removal was timely. **A copy of the both the Federal and State Court filings with respect to the Removal is annexed hereto as Exhibit "B".**

5. This office has numerous conversations with the Plaintiff regarding various issues surrounding this case. During these conversations it has become abundantly clear that Plaintiff and our office are in disagreement as to how to prosecute this matter. Unfortunately, these differences have become intractable.

6. In light of the irreconcilable and conflicting views regarding appropriate direction of this litigation, this office desires to discontinue it's representation of Plaintiff in this action.

7. It is respectfully submitted that an attorney should be permitted to withdraw from representing a client in a personal injury action where the two differ irreconcilably on the proper course to pursue with respect to the underlying litigation. *Sansiviero v Sanders*, 117 A.D.2d 794 (2nd Dep't 1986).

8. It is respectfully requested that this matter be stayed for a period of sixty (60) days for the purposes of affording Plaintiff an opportunity to procure new counsel, should she so desire.

9. Additionally, and pursuant to the Judiciary Law of the State of New York, this office is entitled to a lien for services rendered against any recovery on the part of Plaintiff in the within action and for disbursements incurred in connection with this litigation.

10. Accordingly, it is respectfully requested that the Court's Order acknowledge our lien for services rendered and disbursements incurred and direct that same be honored at the conclusion of this case.

11. There has been no prior application for the relief requested herein.

WHEREFORE, it is respectfully requested that the Court grant an Order permitting Joseph T. Mullen, Jr. & Associates to withdraw as counsel; staying the action for sixty (60) days so that Plaintiff JULIA PICHARDO may have an opportunity to obtain new counsel and; directing that the lien for services rendered and disbursements incurred be honored at the conclusion of this case along with such other and further relief as the Court deems just and proper under the circumstances.

Dated: New York, New York
January 22, 2008

THOMAS M. DESIMONE (TMD 0756)

